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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1968

No. [redacted] 172

ELMER L. DIRKS, Individually and as General Chairman of the BROTHERHOOD OF RAILROAD TRAINMEN, an Unincorporated Association, and CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RY. CO., a Corporation,
Petitioners,

vs.

W. L. BIRKHOLZ, RAY GRANGER, THOMAS FOLEY, DAVID TUCIBAT, WAYNE BLACKBURN and MARVIN HOISINGTON, Individually and in Behalf of All Members of the Switchmen's Union of North America, AFL-CIO, Who Are Employed by the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, and SWITCHMEN'S UNION OF NORTH AMERICA, AFL-CIO, an Unincorporated Association,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

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Respondents.

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To the United States Court of Appeals for the Seventh Circuit.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above entitled case on February 12, 1968.

OPINIONS BELOW.

The corrected opinion of the United States Court of Appeals for the Seventh Circuit is reported at 391 F. 2d 289 (*infra*, p. A-1). The Findings of Fact and Conclu-

sions of Law of the United States District Court for the Northern District of Illinois are unreported (*infra*, p. A-13).

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit reversing the judgment of the United States District Court and remanding the cause for further proceedings consistent with the opinion was entered on February 12, 1968 (*infra*, p. A-12). An order was entered on May 13, 1968, by Mr. Justice Thurgood Marshall extending the time for filing a petition for writ of certiorari to June 10, 1968. The jurisdiction of this Court rests upon 28 U. S. C., § 1254 (1).

QUESTION PRESENTED.

Whether a union shop agreement between a railroad and the statutory representative of its employees in yard service violates the Railway Labor Act unless it permits the employee to satisfy his compulsory membership obligations by joining a rival minority union that cannot negotiate with the carrier because it has not been designated a bargaining representative of any class or craft on the railroad.

STATUTE INVOLVED.

The relevant provisions of the Railway Labor Act ("Act") are Section 2, Eleventh (a) and (c), 64 Stat. 1238, 45 U. S. C., § 152, Eleventh (a) and (c). They are set out in Appendix "C" (*infra*, p. A-20).

STATEMENT.

Petitioner Brotherhood of Railroad Trainmen ("Trainmen") has, since 1926, served as the duly designated exclusive representative of yard service workers employed by petitioner, Chicago, Milwaukee, St. Paul & Pacific Railroad Company (Lines East) ("Carrier") (App. B, §§ 1, 2 and 5).[1] Through its General Grievance Committee chaired by petitioner Elmer L. Dirks, the Trainmen negotiates and administers comprehensive collective bargaining agreements setting forth rates of pay, rules and working conditions for all of the Carrier's yard service employees.[1] These activities are financially supported only by the membership of the Trainmen on that property (App. B, § 2).[2]

Both the Trainmen and respondent Switchmen's Union of North America ("SUNA") are "national in scope, organized in accordance with" the Act and admit to membership yard service employees.[3] Thus each organization

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[1] In the train service brotherhoods such as the Trainmen, the General Grievance Committee "is in charge of the collective bargaining and grievance work on that line. The chairman of a general committee is the most important union functionary on the road, except when, at his request, an officer of the Grand Lodge is sent on the property to assist him." Seidman, *The Brotherhood of Railroad Trainmen* (Wiley, 1962), p. 2.

[2] "The office of the general chairman, along with the other expenses of the general committee, is financed by a general grievance assessment upon all members under the committee's jurisdiction." In 1962 it varied in amount, from $1.50 to $5.00 or $6.00 monthly, based upon the expenses and work of that committee and normally is the most substantial component of the levy upon the membership. Seidman, *ibid.*, pp. 52, 28.

[3] However, the "vast majority" of switchmen belong to the Trainmen. Levinson, "Railway Labor Act—The Record of a Decade", 3 Lab. L. J. 13 at 26-27 (Jan., 1962). As of June 30, 1967, the Trainmen represented yard service employees on 89 of the 105 major railroads shown; SUNA on 12. Thirty-Third Annual Report of the National Mediation Board for Fiscal Year Ended June 30, 1967, pp. 98-100.

designates one of the five labor representatives on the National Railroad Adjustment Board, First Division.[4] However, SUNA does not negotiate collective agreements with the Carrier, has never been certified or, since 1926, recognized as the representative of any of its employees, and has no obligations under the Act to them (App. B, pp. A-14, A-17). Instead, SUNA is competing with the Trainmen for the allegiance of these yardmen and, on November 14, 1966, petitioned the National Mediation Board under Section 2, Ninth of the Act for a representation election in which to wrest bargaining rights for these employees from the Trainmen (App. B, § 8).

On November 16, 1966, the Trainmen served notice on the Carrier for amendment of its union shop contract, written shortly after enactment of the union shop amendments to the Act and so far as material here, a word for word incorporation of the statutory language. Under a disputed interpretation of the 1953 agreement, some yard service employees, including the individual respondents, belonged to SUNA and not their statutory bargaining representative (App. B, § 3).

On February 1, 1967, the Trainmen and the Carrier amended their union shop agreement to provide as follows:

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[4] The other "qualified" operating organizations are Brotherhood of Locomotive Engineers ("BLE"), Brotherhood of Locomotive Firemen & Enginemen ("BLFE") and Order of Railway Conductors & Brakemen ("ORCB"). The practice is for each to designate one of its vice presidents to sit on the Board. "The NRAB procedures cost the . . . labor organizations only the salaries of their representatives on the Board . . . All other costs [including referee fees and expenses] are met by the taxpayers." "The majority of First Division cases and all of the important ones are deadlocked and submitted to the referees." Mangum, "Grievance Procedures for Railroad Operating Employees", 15 Ind. & Lab. Rels. Rev., 474, 499, 487 (1962).

"Section 1.

(a) * * * all employees of the company * * * except as hereinafter provided, shall, as a condition of their continued employment * * * become members of the Brotherhood within sixty calendar days * * * and thereafter shall maintain membership in the Brotherhood; * * *

(b) It is agreed, as a condition of continued employment, all employees of the company shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act, having a labor contract with the C., M., St. P. & P. Railroad Company (lines East) covering employees of a class or craft in train or yard service; provided, however, that nothing contained in this agreement shall prevent any employees from changing membership from one organization to another labor organization, having a labor contract with the C., M., St. P. & P. Railroad Company (lines East), covering employees of a craft or class in train or yard service; provided, further, however, that the right of a yardman, who does not hold interchangeable rights, to acquire or hold membership in an organization shall be confined to the Brotherhood."

The effect of these changes was to require membership in the Trainmen for all yard service employees except those holding employment rights in another craft or class and to limit alternate membership for such persons to qualified labor organizations having a labor agreement with the Carrier covering the other craft or class involved. This did not permit alternative membership in SUNA to satisfy the agreement because that organization does not bargain collectively with the carrier.

SUNA then brought this action for declaratory judgment, injunctive relief and damages, invoking federal

jurisdiction to determine the validity of the amended union shop agreement under the Railway Labor Act. 45 U. S. C., § 151, *et seq.* and 28 U. S. C., §1337. After a trial on the merits, but at the conclusion of the plaintiff's case,[5] the district court granted Dirks' motion to dismiss the complaint.

Relying upon this Court's decisions in *Rychlik*[6] and *Street*[7] and the Third Circuit's decision in *Rohrer,*[8] the district court found that SUNA members "do not contribute a full share of financial support" to their statutory representative, the Trainmen, and therefore the parties could lawfully contract to eliminate such "free riders". It also held that the amended agreement "adequately meets the narrow problem of intercraft mobility" on the property and thus does not defeat the sole purpose of the alternate union provision, namely "to prevent compulsory dual unionism". Finally, citing *Rohrer,* the district court held that intercraft mobility, as well as selection of a NRAB representative, was prerequisite to application of Section 2, Eleventh (c) of the Act.

On appeal, the Court of Appeals for the Seventh Circuit reversed the district court judgment and remanded the cause for further proceedings consistent with its view that

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[5] Although the judgment below was not a final one, the decision holds that the union shop agreement "is violative of Sec. 2, Eleventh (c) properly interpreted" and thus raises an important and clear-cut issue of law that is "fundamental to the further conduct of the case". Therefore, the judgment is now appropriate for review, *Land v. Dollar,* 330 U. S. 731, 734, fn. 2 (1947); *Larson v. Domestic and Foreign Commerce Corp.,* 337 U. S. 682, 685, fn. 3 (1948).

[6] *Pennsylvania Railroad Co. v. Rychlik,* 352 U. S. 480 (1957).

[7] *International Association of Machinists v. Street,* 367 U. S. 740 (1961).

[8] *Rohrer v. Conemaugh & Blacklick R. R. Co.,* 359 F. 2d 127 (3d Cir., 1966).

Section 2, Eleventh (c) must be given a "literal reading", *i. e.* that a union shop contract must permit membership in any one of the five "qualified" operating service unions to satisfy its compulsory membership requirement. Dismissing this Court's exhaustive analysis of the matter in *Rychlik* as "dictum" (App. A, p. A-11), the Court made its own reading of the legislative history of the 1951 union shop amendments. Its holding turned upon the view that Congress, in authorizing union shop in the operating crafts, not only provided for intercraft mobility but actually intended to "recognize" and "protect" the open shop practice of minority membership in dissident unions within the bargaining unit and frequent raiding among qualified unions.[9] The decision purports

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[9] As corollary points, the court thought that, under petitioner's agreement, the second proviso to Section 2, Eleventh (c) was "devoid of meaning", despite this Court's emphasis in *Felter v. Southern Pacific Co.*, 359 U. S. 326, 336-337 (1959), that the intercraft mobility sections of the *Rychlik* opinion controlled "the area where even a worker under a union-shop arrangement can change affiliations". The agreement here leaves brakemen holding conductor rights "open for solicitation by rival organizations", *i. e.*, the Trainmen and ORCB.

Also, the decision expresses fear that if the instant agreement be held lawful, the courts may be burdened with "*ad hoc* adjudications" as to an individual's job rights in another craft. The fear is groundless, since operating employees can readily determine whether an organization holds a labor agreement with their employer. Likewise, asserted difficulties in determining job rights are a spurious concern. "[T]o become either a conductor or an engineer requires experience as a brakeman or as a fireman, as the case may be. For this reason a brakeman does not lose his seniority as a brakeman when he is promoted to and establishes his seniority date as a conductor (when actual use in that service begins). Instead, his seniority as a brakeman continues to accumulate and his seniority as a conductor begins to accumulate. *His name will appear on both rosters as long as he continues to work in either capacity in the same seniority district.* This same dual seniority arrangement exists also for the fireman-engineer employee." "Seniority Practices—Railroad Operating Employer and Other Industries", Studies Relating to Railroad Operating Employees, Appendix Volume III to the Report of the Presidential Railroad Commission (Wash., 1962), p. 232 (emphasis ours).

to distinguish *Rohrer* because the railroad was "wholly owned by a steel company", "not organized according to crafts", and because the union shop agreement was not "negotiated by one of the five national operating craft unions" (App. A, p. 11).

REASONS FOR GRANTING THE WRIT.

I. The Decision Below Interprets the Union Shop Amendments to the Act in a Manner That Conflicts With Applicable Decisions of This Court and Frustrates Congressional Intent.

This case presents a question of basic importance in the administration of the union shop amendments of the Railway Labor Act covering more than 200,000 operating service employees, the five labor organizations "representing practically all the major railroad's operating employees,[10] and their employers: whether a railroad and the statutory representative of one of its operating crafts may by contract eliminate "free riders" belonging to a rival minority union that First Division, has no collective agreements with that carrier to negotiate or administer, and whose members do not therefore face the very narrow problem of intercraft mobility under railroad union shop contracts. If this question was not answered by this Court in *Rychlik*—and petitioners respectfully contend that it was—then it surely should be decided now.

In *Railway Employes' Dept. v. Hanson,* 351 U. S. 225 (1956), this Court decided that Section 2, Eleventh was constitutionally enacted to permit agreements that compel "financial support of the collective bargaining agency by all who receive the benefits of its work", 351 U. S. at

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[10] Thirty-Third Annual Report of the National Mediation Board for the Fiscal Year Ended June 30, 1967, p. 10.

238. Its purposes parallel and respond to the obligations of the earlier *Steele* doctrine:[11] that the statutory bargaining agency must "represent non-union or minority union members without hostile discrimination, fairly, impartially, and in good faith", 323 U. S. at 204. Only the duly designated bargaining agent carries this duty, since its status "operates to exclude any other from representing a craft" and thus to deprive members of a minority union "of the right, which they would otherwise possess, to choose a representative of their own", 323 U. S. at 200. In *Street,* this Court emphasized that, despite the reach of its "broad language",[12] Section 2, Eleventh must be limited by construction to its legislative purpose: "to force employees to share the costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes", 367 U. S. at 764.

The decision below conflicts with *Hanson* and *Street* by refusing to construe Section 2, Eleventh as commensurate with the duty of fair representation impressed upon the statutory bargaining representative. For this union shop agreement insures that an alternate qualified union will in fact function on the property as a statutory representative of a craft in which its members hold job rights in order to benefit from the compulsory membership provisions.[13] By holding that a union shop agreement must afford the operating employee an absolute right to choose membership in any one of the five qualified organizations, without regard to its status as a

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[11] *Steele v. Louisville & Nashville R. R. Co.,* 323 U. S. 192 (1944).

[12] Dissenting opinion of Mr. Justice Black, 367 U. S. at 784.

[13] Because of the dues structure of the train service Brotherhoods, this requirement has wholesome financial implications as well. See *infra,* p. 13.

bargaining representative, the decision below frustrates the "primary union and congressional concern . . . with the elimination of the 'free rider' who did not support *his* representative's performance of *its* functions under the Act", 367 U. S. at 764, fn. 15 (emphasis ours).

Recent drastic reductions in operating service employment coupled with substantially increased costs of collective bargaining representation underscore the importance of the question presented here. Enactment of Public Law 88-108, the award of Arbitration Board 282 on the diesel firemen matter and proceedings to reduce the consist of train, road and yard crews on each property before its subsidiary special boards, have caused substantial increases in representation and litigation expense in the operating crafts while sharply reducing the active membership base that finances the cost.[14]

The decision below holds that a "literal reading" of Section 2, Eleventh compels petitioners to tolerate free riders on the property so long as they belong to any qualified union even one that does not collectively bargain for any employees of the carrier. Worse yet, the decision below finds a statutory purpose to foster minority enclaves of rival union members in the operating crafts, although such members subsidize efforts that force the bargaining agent to divert resources from performing its statutory functions to fending off raids. But so long as the raiding is fratricidal, among qualified unions, the decision below calls it "intercraft mobility" and discerns

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[14] Thus, active membership in the Brotherhood of Locomotive Firemen and Enginemen, which of course is equally affected by the decision below, is estimated to have been cut from 38,000 in 1963 to 21,000 in 1966. The "continued contraction of employment opportunities" in operating service "will serve to buttress [the] traditional rivalry" for members that affects all five qualified operating unions. Levinson, Railway Labor Act—The Record of a Decade, 3 Lab. L. J. 13 at 26-27 (Jan. 1952).

a legislative purpose to protect it as well. These views head on with *Rychlik* and *Street*.

The Court of Appeals thinks it "absurd to interpret away the literal language of 2 Eleventh (c)". But this Court has already held in *Rychlik* that this language, "at first glance . . . disarmingly clear", cannot be read "in a vacuum" but must be construed "in the light of the policies this Section was intended to serve", 352 U. S. at 488. The Court of Appeals believes that Congress intended to perpetuate "the operating craft tradition" existing when the Act barred any form of union security of permitting membership in a minority union after it loses bargaining rights for the craft. But in *Street* this Court emphasized that Section 2, Eleventh must be interpreted, not in the light of the unaccepted desires of certain unions or historical practices, but in accordance with "the reasons advanced by the unions and accepted by Congress" as to why the amendments were warranted, 367 U. S. 740 at 768.

The Court of Appeals found that Section 2, Eleventh (c) was drafted so that an operating employee could choose "membership in any standard operating craft union" to satisfy his compulsory membership obligation. But this Court in *Rychlik* stressed on three separate occasions:

> ". . . The purpose of Congress [in the alternate union provision] was not . . . to give employees in the railroad industry any blanket right to join unions other than the authorized bargaining representative, or to help dissident or rising new unions recruit new members." 352 U. S. at 488.
>
> ". . . the only purpose of § 2, Eleventh (c) was a very narrow one: to prevent compulsory dual unionism or the necessity of changing from one union to another when an employee temporarily changes crafts . . . [It

> was not] intended to provide employees with a general right to join unions other than the designated bargaining representative of their craft, except to meet the narrow problem of intercraft mobility." 352 U. S. at 492-493.
>
> ". . . once a union has lawfully established itself . . . as the authorized representative of the employees under a union shop contract, Congress has never deemed it to be a 'right' of employees to choose . . . membership in . . . another competing union . . . The purpose of § 2, Eleventh (c) was simply to resolve the problem of intercraft mobility under railroad union shop contracts." 352 U. S. at 494.

Although it adopts a "literal reading" of the statutory text, the decision below ignores the next-to-last proviso of Section 2, Eleventh (c), requiring a new employee to join the bargaining representative rather than "any union (qualified under Section 2, Eleventh)", which *Rychlik* says "completely negates the argument" that the purpose of the statute was to allow an operating employee to *choose* between "even such competing unions which are concededly national in scope". 352 U. S. at 492, fn. 29.

Congressional intent has been thoroughly frustrated because the Court of Appeals dismissed the dispositive *Rychlik* study of the legislative history as mere "dictum" and made one of its own. Relying upon a supposed motive of the brotherhoods who agreed upon it rather than the clearly expressed intent of its sponsors, the decision below finds a legislative policy to preserve the "balance of power" between the majority and rival minority union members in the craft or class. This doctrine is not only contrary to sound labor policy and inconsistent with this Court's *Rychlik* views, it runs directly contrary to a principal premise on which Congress enacted the amendments. Repeatedly and insistently, union spokesman George Har-

rison, whose statements as to the legislation have been deemed authoritative,[15] argued that authorization of union shops on the railroads would discourage raiding, irresponsible rival union appeals and criticism and other such turmoil, by wiping out the pockets of rival union members that served as its base.[16]

Given the jurisdictional rivalries and the absence of a unitary dues structure among the operating unions, the decision below may operate to frustrate every major purpose for which Congress enacted the union shop amendments. Since the operating employee must join one of the five qualified unions, he is financially encouraged to belong to one that does *not* have collective bargaining obligations on the property since, lacking a grievance assessment,[17] it may offer cheaper dues.[18] In turn, these

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[15] *Street*, 367 U. S. at 761.

[16] "Representation disputes should be reduced under union shop conditions." "The grievance procedure will cease to be a battleground for rival unions." "The union shop makes it more difficult for one union to raid another and thus eliminates or reduces weeks and months of turmoil . . . Employees who participate, through membership, in the formulation of their own . . . working conditions will be much less susceptible to irresponsible appeals and unjustified criticism of rival unions. Where all employees are members . . ., it is just as easy to change the policies . . . as it is to change the collective bargaining representative." ". . . the fact that all of the members of a craft or class may be required to join a union as a condition of employment will do much to discourage raiding by other labor organizations. The rivalry between unions will be decreased rather than increased by reason of the fact that the class or craft will be fully organized and all of its members will belong to the organization representing the members of such class or craft." House Hearings, on H. R. 7789, 81st Cong., 2d Sess., pp. 10, 11, 246. The same theme sounds through the Senate Hearings, 81st Cong., 2d Sess. on S. 3295, pp. 16, 17, 40.

[17] In the operating Brotherhoods the employee will pay nominal dues plus an assessment to finance the activities of the general grievance committee. House Hearings, p. 257; *Street*, 367 U. S. at 766.

[18] This consideration, relied upon in *Street* as a reason why UROC did not qualify under Section 2, Eleventh (c), is equally

revenues are available to finance predatory activities aimed at eventually unseating the bargaining representative.[19] Ultimately, the union required to fulfill all of the obligations of a statutory representative may be left with no membership to defray the cost. Surely, a construction of Section 2, Eleventh (c) that permits such mischief warrants review by this Court.

II. The Decision Below Directly Conflicts With the Decision on the Same Question by the Court of Appeals for the Third Circuit.

The decision below and the decision of the Second Circuit in *O'Connell v. Erie Lackawanna R. R. Co.*; 391 F. 2d 156[20] (2d Cir., 1968) conflict directly with the decision of the Third Circuit in *Rohrer v. Conemaugh & Blacklick R. R. Co.*, 359 F. 2d 127 (3d Cir., 1966). In each case the provisions of Section 2, Eleventh (c) required interpretation, since the employees involved worked in engine, train, yard or hostling service and belonged to a union other than the bargaining representative. In each case, that union was without bargaining rights on the property but was one of the "qualified" organizations that select labor members of the First Division of the National Rail-

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applicable here. "Employees would be tempted to desert the organization of the bargaining representative which was assuming its responsibilities under the Act in favor of another union which was not . . . and which could thereby offer cheaper dues. This would defeat the very purpose of the union [shop] amendment which is to compel each employee to contribute his part to the bargaining representative's activities on his behalf including its participation in the administrative machinery of the Act." *Street*, 367 U. S. at 764, fn. 15.

[19] Such an "actual situation" is discussed and deplored in Levinson, Union Shop Under the Railway Labor Act, 6 Lab. L. J. 441; 448.

[20] Now pending before this Court on petition for certiorari filed June 3, 1968, sub nom. *Brotherhood of Railroad Trainmen v. John P. O'Connell.*

road Adjustment Board. In each case, the validity of the union shop agreement was challenged under Section 2, Eleventh (c) because it failed to permit affiliation with any such union to satisfy its membership requirements.

The court below and the Second Circuit have unequivocally held that each employee in operating service has a statutory right to choose between membership in the authorized bargaining representative and in one of the other four "qualified" unions, even though he faced no problem of "intercraft mobility". The Third Circuit, on the other hand, has held that alternate membership rights need not be extended unless the operating service employee is subject to transfer into the bargaining unit of another contracting qualified union.

The differences in these constructions of the same statute are irreconcilable and, as we have urged, of far-reaching importance in the administration of the Act. They cannot be obscured by seizing upon plainly irrelevant facts or distinctions to limit the opposing holding. The court below rejected *Rohrer* stating:

> "Sec. 2, Eleventh (c) does not apply at all to a railroad which is wholly owned by a steel company, which is not organized according to crafts, and all of whose employees are represented by the United Steel Workers Union" (App. A, p. A-11).

On the contrary, not one word in the statute, the case law, or in *Rohrer* suggests that the validity of union shop contracts depends in any way upon who holds the stock interest, if the railroad is a "carrier" as defined in the Act, or the identity of the Union that has bargaining rights.[21] And there can be no rational distinction between

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[21] In fact, *Rohrer* also rejected a challenge to the validity of its union shop contract because the Steelworkers are not "national

an all-crafts unit and a multi-craft unit on a particular property if, as *Rohrer* holds, the determinative fact in each circumstance is that the operating employee does not face the "necessity of changing from one union to another when [he] . . . temporarily changes crafts". Finally, while the decision below suggests that a distinction exists because the *Rohrer* union shop contract was not "negotiated by one of the five national operating craft unions", Section 2, Eleventh (a) permits no such differentiation, and it rather than subsection (c) defines the terms on which the negotiating union may enter into union shop agreements.

The Second Circuit's opinion in *O'Connell* attempted no distinction but squarely conceded that *Rohrer* was a "contrary holding" to its decision and that of the court below, and expressly declined to follow the Third Circuit's construction of the statute. The legislative will that railroad union shop contracts shall be of uniform application is explicit in Section 2, Eleventh.[22] "Contrary holdings" among the circuits, as much as contrary state or federal laws, frustrate "industrial peace along the arteries of commerce", *Hanson,* 351 U. S. at p. 233, since operating employees move from circuit to circuit as from state to state and rail collective bargaining proceeds in system-wide units that frequently traverse circuit boundaries. Review of the decision below, arising in a jurisdiction that encompasses the rail capital of the nation, and in conflict with that of a circuit containing the headquarters of the country's largest railroad, is a practical imperative.

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in scope", etc., holding that statutory limitation applicable only to the *alternate* union and not to the organization that negotiates the contract. 359 F. 2d at 131-132.

[22] "Notwithstanding any other provisions . . . of any other statute or law of the United States or . . . of any state."

CONCLUSION.

For the reasons stated above, this petition should be granted.

Respectfully submitted,

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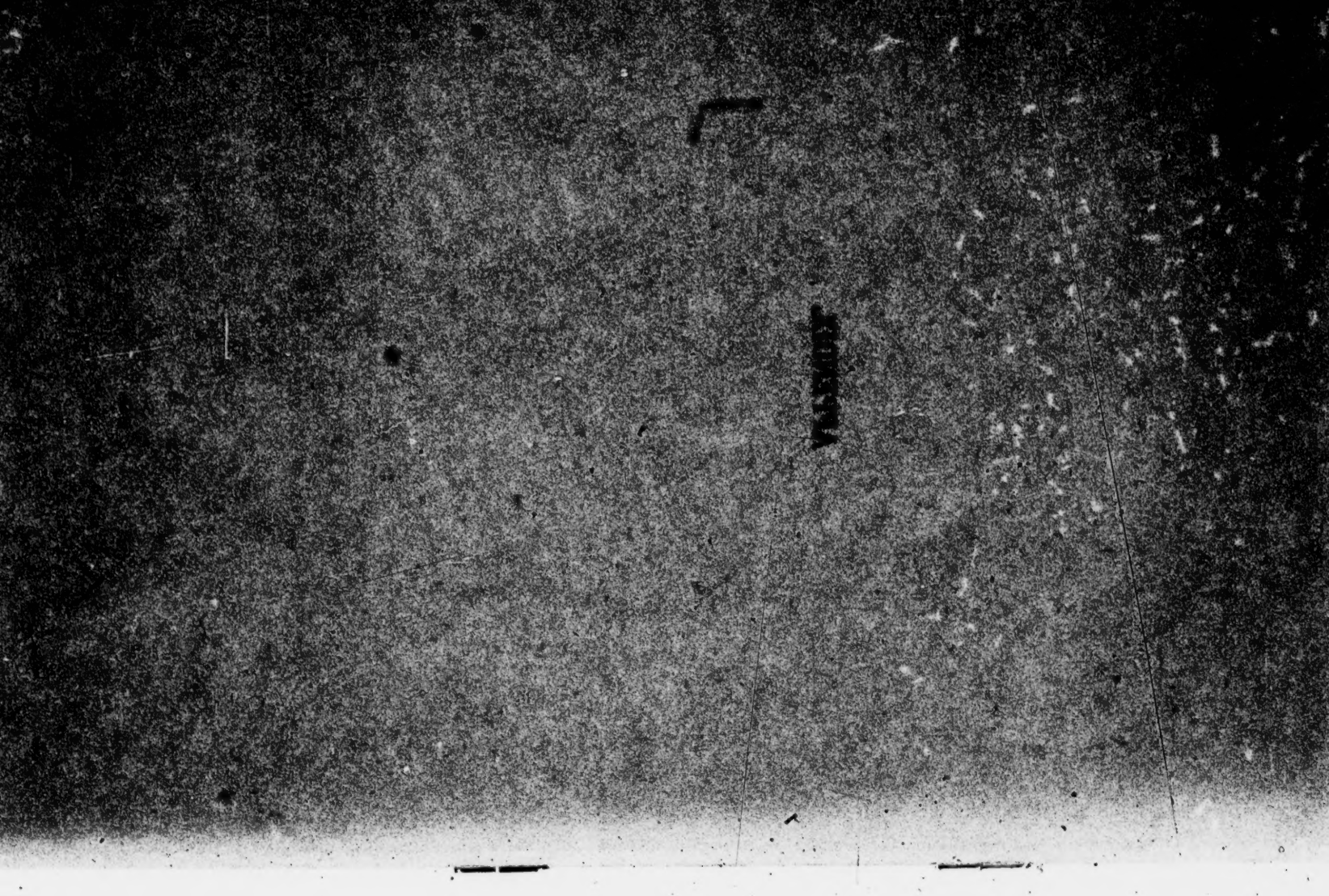
APPENDIX.



APPENDIX "A".

Opinion and Judgment Below.

(Corrected.)

In the
United States Court of Appeals
For the Seventh Circuit

No. 16340 September Term, 1967 September Session, 1967

W. L. Birkholz, *et al.*, Plaintiffs-Appellants, v. Elmer L. Dirks, *etc.*, *et al.*, Defendants-Appellees.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

February 12, 1968.

Before Schnackenberg, Kiley and Swygert, *Circuit Judges.*

Kiley, *Circuit Judge.* The Switchmen's Union of North America (SUNA) and six of its members sued, individually and as representatives of all members of SUNA who are yard service employees on the Milwaukee, St. Paul, and Pacific Railroad (Milwaukee), seeking a judgment declaring the union shop agreement between the Milwaukee and the Brotherhood of Railroad Trainmen (Trainmen) void, and seeking damages and injunctive relief. The district court after a hearing dismissed the

suit and SUNA and the representative employees appeal. We reverse.

The Trainmen's Union has, since the 1926 adoption of the Railway Labor Act, served as bargaining agent for the Milwaukee's yard service employees. Both SUNA and the Trainmen are among the five national operating craft unions represented on the National Railroad Adjustment Board under Sec. 153 (h) of the Railway Labor Act, 45 U. S. C. Since the Trainmen's Union has been the bargaining agent, some yard service employees have held cards in SUNA rather than in the Trainmen.

On November 14, 1966, SUNA filed a petition before the National Mediation Board for a representative election seeking certification as bargaining agent for all yard service employees of the Milwaukee. Two days later the Trainmen served notice on the Milwaukee for modification of the existing agreement, made in 1953. On February 1, 1967, the agreement was modified by adding the union shop amendment in dispute.[1] SUNA then brought this

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[1] Section 1.

(a) * * * all employees of the company * * * except as hereinafter provided, shall, as a condition of their continued employment * * * become members of the Brotherhood within sixty calendar days * * * and thereafter shall maintain membership in the Brotherhood; * * *

(b) It is agreed, as a condition of continued employment, all employees of the company shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act, having a labor contract with the C. M. St. P. & P. Railroad Company (lines East) covering employees of a class or craft in train or yard service; provided, however, that nothing contained in this agreement shall prevent any employees from changing membership from one organization to another labor organization, having a labor contract with the C. M. St. P. & P. Railroad Company (lines East), covering employees of a craft or class in train or yard service; provided, further, however, that the right of a yardman, who does not hold interchangeable rights, to acquire or hold membership in an organization shall be confined to the Brotherhood.

suit to void the amendment on the ground that it violated Section 2 Eleventh (c) of the Railway Labor Act.[2]

The district court in dismissing SUNA's complaint decided that the Milwaukee and Trainmen could contract to require members of SUNA to join the Trainmen despite the language of 2 Eleventh (c) because SUNA did not support the bargaining agreement's grievance committee, and had no obligation to the Milwaukee employees; and because the court was persuaded by defendant's argument that 2 Eleventh (c) must be restrictively interpreted to permit the type of union shop clause in the Trainmen's contract because the only purpose of 2 Eleventh (c) was to prevent an employee who temporarily changed crafts from being required to change unions and the contract provision fulfills this purpose. The court relied upon

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[2] (c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First Division of paragraph (h) of Section 153 of this title, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services, such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.

Pennsylvania R. Co. v. Rychlik, 352 U. S. 480, 492, and *Rohrer v. Conemaugh & Black Lick R. R. Co.*, 359 F. 2d 127.

The Trainmen and Milwaukee concede that their union shop clause violates Sec. 2 Eleventh (c) of the Railway Labor Act if that section is read literally. We agree. Par. (c) qualifies the right to enter into a union shop agreement given under Par. (a).[3] Under Par. (c) the membership requirement of the union shop clause must be satisfied as to employees "in engine, train, yard or hostling service" by membership in any union "national in scope, organized in accordance with the Act" which admits to membership any employee in a craft covering any of the services designated. It is plain that under the literal language of Par. (c) any requirement of membership in the Trainmen's Union negotiated under Par. (a) would have to permit alternative membership in SUNA since SUNA admits yard service employees to membership, and is, as the district court found, "national in scope and organized in accordance with the Act."

The union shop agreement signed by the Milwaukee and the Trainmen does not permit yard service employees to maintain alternate membership in SUNA. Under the agreement all operating craft employees must belong to the Trainmen unless they belong to another union which is national in scope and has a contract with the Milwaukee and unless the particular yardman concerned has interchangeable right, *i. e.*, the right to be employed in another

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[3] . . . any carrier . . . and a labor organization . . . shall be permitted—

(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class:

* * * * * * * *

craft in addition to yard service. Thus the contract requires two conditions, in addition to the national in scope requirement of the Act, before alternate union membership is permissible. Under this agreement a yard service employee's membership in SUNA cannot serve as a substitute for membership in the Trainmen since SUNA has no contact with the Milwaukee and since most yard service employees do not have interchangeable rights.

The vital issue before us is whether Sec. 2 Eleventh (c) renders the February 1, 1967 union shop clause of defendants' agreement void. We think that the literal reading of Sec. 2 Eleventh (c) expresses the intention of Congress as demonstrated by the legislative history of the Act.

The legislative background of Sec. 2 Eleventh (c) is well known. In 1934 Congress, in an effort to combat company dominated unions which were then prevalent on railroads, outlawed the union shop. In 1951, however, railway labor organizations sought the authorization of union shop agreements. Congress was agreeable to authorizing the union shop but in hearings encountered the problem of intercraft mobility. Operating employees organized along craft lines frequently changed crafts either through temporary promotions or demotions as the railroad's needs for workers of a particular craft dictated. An employee who worked in one craft and belonged to his craft union might, for example, upon being promoted to another craft be required by a union shop agreement to belong to the union which represented the new craft to which he had been temporarily promoted. He would then be faced with the choice of either maintaining dual union membership or of quitting his old union and perhaps sacrificing interests in pensions and other benefits under his original craft membership. The problem of intercraft mobility could also affect union members who have no interchangeable rights in another

craft. The union to which these members belong might have interchangeable rights with the first craft and are transferred into that craft. The craft union whose members had interchangeable rights could then negotiate a union shop agreement requiring the employee in the first craft to quit his now minority union or maintain dual union membership.

The evil of placing upon the operating employee the choice of maintaining dual union membership or of quitting his old union was recognized by Congress at the time proposals for authorizing the union shop were being considered. Three proposals for preventing this evil and solving the problem of intercraft relationships among operating employees were considered. The first proposal was aimed at protecting employees from denial of membership in the bargaining union because of membership in another union. This would have protected, for example, a member of the firemen's union from being denied membership in the engineers' union and thereby being denied work in a unit represented by the engineers. All operating unions objected to this proposal because it would not eliminate the choice of maintaining dual union membership or of quitting the union the employee had belonged to in the past.

The second solution was presented by the Trainmen. Under this proposal the union membership requirement authorized by Sec. 2 Eleventh (a) could be satisfied with respect to closely related crafts where the employee held employment rights in more than one, or promotional rights from one, to another, by membership in the craft union which represents the employees in any craft in which he is entitled to work. In other words, the employee member of one of the five crafts could satisfy the membership requirement only by membership in the union that is the bargaining agent for the craft in which he is

working or in a union that is the bargaining agent for another craft in which he is also entitled to work.

This second proposal would have provided the identical amount of protection for minority union members as does the contract entered into by the Trainmen and the Milwaukee and as would Sec. 2 Eleventh (c) if interpreted in the manner urged by the Trainmen. The Trainmen's proposal was rejected by Congress. While it is clear that the Trainmen's proposal would adequately protect the employee who was transferred from one craft to another and did not wish to give up membership in the union which represented his original craft, the proposal would offer no protection to the operating craft employee whose union became a minority union due to an influx of transferees from another craft, nor would the proposal give recognition to the operating craft tradition of permitting membership in minority unions.

The third proposal was a prohibition against requiring membership in more than one labor organization. This would have permitted an employee represented by an operating craft union to maintain membership in a non-operating union despite the existence of a union shop agreement.

The union shop bill as reported to the Senate contained the third proposal outlined above and because of this was opposed by the Trainmen and three other operating brotherhoods. The Senate postponed consideration of the bill to enable the four brotherhoods to produce a compromise proposal which they could all support. The result was the present language of Sec. 2 Eleventh (c) which was approved by the four brotherhoods and which was ultimately incorporated in the Act.

In the light of this legislative history we must reject the restrictive interpretation of Sec. 2 Eleventh (c) which the Trainmen urged unsuccessfully upon the Senate Com-

mittee and now urge upon us. We hold that the union shop provision of the collective bargaining agreement before us is violative of Sec. 2 Eleventh (c) properly interpreted.

We think it would be absurd to interpret away the literal language of 2 Eleventh(c) by reading it as though it said almost exactly what was said in a proposal which was rejected at committee hearings and which places members of SUNA—organized under the Act and national in scope and covering the craft of yard services—in the dilemma of choosing between compulsory dual unionism or a compulsory change from their own craft union to the Trainmen. Each horn of this dilemma was rejected by Congress in 1950. If Congress had intended to limit the protection afforded by 2 Eleventh(c) in the manner urged by the Trainmen they would have used the explicit language which the Trainmen had suggested to them. Moreover it must be remembered that the actual language of 2 Eleventh(c) was drafted by four operating brotherhoods including the Trainmen, and had these brotherhoods agreed that it was desirable to limit the scope of 2 Eleventh(c) as the Trainmen wished, they would have adopted the explicit language previously proposed by the Trainmen.

Moreover, if the interpretation of 2 Eleventh(c) urged by the Trainmen were adopted the result would be to render the second proviso of 2 Eleventh(c) devoid of any meaning. The second proviso states that "nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services." The Trainmen's contract prevents craft employees from switching from the Trainmen to other operating craft unions.

We are impressed with the reasoning of Judge Herlands of the Southern District of New York in his opinion in *O'Connell, et al. v. Erie Lackawanna Railroad Co., et al.*, 65 LRRM 2372. Judge Herlands rejected the argument of the Trainmen there that Sec. 2 Eleventh(c) should not be construed to make a union shop provision requiring members of other operating craft unions to join the Trainmen unlawful, where the men concerned did not have interchangeable rights. Judge Herlands pointed out the difficulties that would follow upon an insistence that Congress, even though it did not express it, intended the validity of a union shop agreement to depend on the interchangeable rights of each employee in the majority and minority unions involved. The result, as Judge Herlands stated, would be that each member of a majority union who is within the jurisdiction of a bargaining contract would be faced with the necessity of proving rights in another craft, and as a result federal courts might be called upon to make ad hoc adjudications in a large number of individual cases. Judge Herlands pointed out several practical problems which would be encountered in making these determinations. One reason that Sec. 2 Eleventh(c) was drafted as it was may well have been to avoid such problems.

We also consider the contemporaneous interpretation of this Section by the operating craft brotherhoods significant in determining its proper interpretations, since they themselves drafted the Section to meet their own needs. It is undisputed that for fifteen years after the passage of the Act all union shop agreements entered into by standard operating unions, including the Trainmen, contained the exact literal language of Sec. 2 Eleventh(c) and that that language was interpreted to permit alternate membership in any standard operating craft union. The Trainmen's position would suggest that the drafters of 2 Eleventh(c), including itself, did not know what the Section meant and

have been misapplying it for fifteen years. This position is inherently unpersuasive especially when it is recognized that the interpretation now urged would change the law to conform to the proposal which the Trainmen unsuccessfully advocated before Congress at the time the Section was enacted.

The fifteen year practice of allowing membership in any standard operating craft union to satisfy union shop agreements also militates strongly against the Trainmen's argument that the elimination of minority representation would promote peace between unions. It is difficult to see how labor peace would be promoted by abrogating what is, in effect, an agreement between the operating brotherhoods which has guided their relations for fifteen years.

We believe that the railroad unions responsible for Sec. 2 Eleventh(c), and Congress, deliberately chose to avoid the dangers of dual unionism by the method outlined in the literal language of Sec. 2 Eleventh(c) in order to provide clear and unequivocal protection from compulsory dual union membership, and also to avoid upsetting the balance of union power between the majority union bargaining agent and substantial minority union members within the bargaining unit.

We do not find *Pennsylvania R. Co. v. Rychlik,* 352 U. S. 480, to be inconsistent with our conclusion that membership in SUNA must satisfy any union membership requirement negotiated by the Trainmen with the Milwaukee. The holding in *Rychlik* is that Sec. 2 Eleventh (c) of the Act makes only unions already qualified as electors for the labor members of the National Railroad Adjustment Board under Sec. 3 First, available for alternate membership under a union shop agreement. The plaintiff there had resigned from the Trainmen's Union and joined UROC, a rising competing union. The Trainmen requested the railroad to discharge Rychlik and this

was done. UROC however, was not a union national in scope eligible to elect members to the NRAB. What the Supreme Court said in dictum in that case was with respect to that factual situation.

The Trainmen also rely on *Rohrer v. Conemaugh & Black Lick R. R. Co.*, 359 F. 2d 127, but the holding there was that Sec. 2 Eleventh(c) does not apply at all to a railroad which is wholly owned by a steel company, which is not organized according to crafts, and all of whose employees are represented by the United Steel Workers Union. The Trainmen cite no case where a union shop agreement negotiated by one of the five national operating craft unions was permitted to bar an employee from belonging to another national operating craft union as an alternative to belonging to the bargaining union.

We therefore reverse the judgment of the district court and remand for further proceedings consistent with the views expressed in this opinion.

JUDGMENT.

United States Court of Appeals
For the Seventh Circuit,
Chicago, Illinois 60604.

Monday, February 12, 1968.

Before Hon. Elmer J. Schnackenberg, Circuit Judge, Hon. Roger J. Kiley, Circuit Judge, Hon. Luther M. Swygert, Circuit Judge.

W. L. Birkholz, et al.,
Plaintiffs-Appellants,

No. 16340. vs.

Elmer L. Dirks, etc., et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, Reversed, with costs, and that this cause be, and it is hereby Remanded to the said District Court for further proceedings consistent with the views expressed in the opinion of this Court filed this day.

APPENDIX "B".

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT ORDER.

In the United States District Court.

* * (Caption—67-C-285) * *

Findings of Fact.

1. Defendants Chicago, Milwaukee, St. Paul & Pacific Railroad Company ("Carrier") and Brotherhood of Railroad Trainmen, AFL-CIO ("Trainmen") are respectively a carrier and the representative of its yard service employees under the Railway Labor Act, 45 U. S. C., § 151 (Complaint, ¶ 11; Plaintiffs' Exhibit No. 5). Defendant Elmer L. Dirks is General Chairman of the General Grievance Committee maintained by the Trainmen for the Carrier's Lines East (Complaint, ¶ 9).

2. The Trainmen, through its General Grievance Committee, is party to collective bargaining agreements with the Carrier setting forth rates of pay, rules, and working conditions for all yardmen employed on Lines East (Tr. 757-6). The activities of the General Grievance Committee receive direct financial support only from the membership of the Trainmen (Tr. 76-77, 83-84).

3. Both plaintiff Switchmen's Union of North America, AFL-CIO ("SUNA") and the Trainmen are among the five "standard" operating organizations qualified to select or designate members of the National Railroad Adjustment Board, First Division, as provided in Section 3 of the Railway Labor Act, 45 U. S. C., § 153 (Complaint, ¶ 8; Tr. 37, 106). On November 14, 1966, under the terms of the union shop agreement then in effect between the Trainmen and the Carrier, a number of yardmen in the bargaining unit represented by the Trainmen, including

the five individual plaintiffs, held membership in SUNA (Tr. 34, 85).

4. On February 1, 1967, the Trainmen and the Carrier modified their union shop agreement to provide, in relevant part, as follows:

> "Section 1 (b) It is agreed, as a condition of continued employment, all employees of the company shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with the Railway Labor Act, having a labor contract with the C. M. St. P. & P. Railroad Company (Lines East) covering employees of a class or craft in train or yard service; provided, however, that nothing contained in this agreement shall prevent any employee from changing membership from one organization to another organization, having a labor contract with the C. M. St. P. & P. Railroad Company (Lines East), covering employees of a craft or class in train or yard service; provided further, however, that the right of a yardman, who does not hold interchangeable rights, to acquire or hold membership in an organization shall be confined to the Brotherhood" (Plaintiffs' Exhibit No. 9).

The effect of the changes was to require membership in the Trainmen for all yardmen except those holding employment rights in another craft or class and to limit alternate membership for such persons to organizations having a labor agreement with the Carrier covering employees in its train or yard service.

5. SUNA has no labor agreement with the Carrier, does not negotiate basic labor agreements with the Carrier, and has never been certified or recognized as the representative of any employees of the Carrier at any time since passage of the Railway Labor Act in 1926 (Tr. 74-75, 79, 80, 124; Complaint, ¶ 14). Membership in SUNA

will not satisfy the obligations imposed upon yardmen by the February 1, 1967, union shop agreement.

6. SUNA and the Trainmen help finance activities of the Railway Labor Executives Association, a private organization of the presidents of the "standard" railroad labor unions to formulate and sponsor national legislative and policy programs of common concern (Tr. 25, 26, 116). Both organizations have represented their respective memberships on various boards and committees and have participated in certain litigation of interest to railroad labor generally and, on occasion, in the negotiation of particular agreements affecting employees on all Class I railroads (Tr. 27, 31, 32, 33, 34, 83-84, 117-118, 124, 128-129).

7. In several instances, SUNA has chosen to process cases under the Trainmens' collective agreements before designated officers of the Carrier and before the National Railroad Adjustment Board for individual members of SUNA whom the Trainmen would otherwise represent (Tr. 76-78, 79, 114-115, 125). However, on the record as a whole, the Court finds that SUNA members employed by the Carrier do not contribute a full share of financial support to the General Grievance Committee of the Trainmen for the performance of its functions under the Railway Labor Act.

8. On November 14, 1966, SUNA applied to the National Mediation Board for a representation election among yardmen employed on the eastern and western lines of the Carrier, but no such election has been ordered or scheduled by the Board (Plaintiffs' Exhibits Nos. 4, 5 and 6; Tr. 58). SUNA is competing with the Trainmen for allegiance of the yardmen and seeks to supplant the Trainmen as their statutory bargaining representative (Plaintiffs' Exhibit No. 7).

9. Although the February 1, 1967 union shop agreement applied only to Lines East of the Carrier and the Lines

West agreement does not prohibit SUNA membership, SUNA's application for an election encompassed both the eastern and western lines (Tr. 99-103). The evidence does not demonstrate that the defendants modified their union shop agreement for the purpose of influencing the outcome of any election that the National Mediation Board may conduct.

Conclusions of Law.

1. This Court has jurisdiction under the Railway Labor Act, 45 U. S. C., § 151, et seq., and 28 U. S. C. 1337, to determine the validity of union shop agreements.

2. This Court has jurisdiction to determine whether the union shop agreement of February 1, 1967 was entered into by defendants for the purpose of influencing the outcome of a representation election to be conducted by the National Mediation Board. Since the charge involves a dispute between certain employees of the Carrier and their bargaining representative, it is within the jurisdiction of this Court, joinder of the Carrier notwithstanding. *Rumbaugh v. Winifrede Railroad Co.*, 331 F. 2d 530, 535-536, 538 (4th Cir. 1964), Sobeloff, C. J., *cert. denied*, 379 U. S. 929 (1964).

3. The provisions of Section 2, Eleventh, of the Railway Labor Act, 45 U. S. C. 152, Eleventh, authorize carriers and the representatives of their employees to enter into union shop agreements requiring employees within the craft or class represented to become and to remain members of the bargaining representative as a condition of employment.

4. The 1951 union shop amendments to the Railway Labor Act, 45 U. S. C., § 2, Eleventh, were enacted in order that defendants could contract for "the elimination of the 'free rider' who did not support his representa-

tive's performance of its functions under the Act." *International Association of Machinists v. Street,* 367 U. S. 740, 763-64 (1961). It is the statutory representative of the craft or class, in this case the Trainmen, that was the object of Congressional concern. SUNA is without obligations under the Railway Labor Act to employees of the Carrier.

5. The language of Section 2, Eleventh (c) which permits alternative union membership for operating employees in an organization national in scope and organized in accordance with the Act, cannot be literally applied but must be limited in its scope by construction in light of the policy it was intended to serve. "The only purpose of Section 2, Eleventh (c) was a very narrow one—to prevent compulsory dual unionism or the necessity of changing from one union to another when an employee temporarily changes crafts." *Pennsylvania Railroad Co. v. Rychlik,* 352 U. S. 480, 492 (1957).

6. The February 1, 1967, union shop agreement adequately meets the narrow problem of intercraft mobility by permitting alternative membership for yardmen holding employment rights in another craft or class, namely those with interchangeable rights, and in unions that have contracts with the Carrier covering the other craft or class involved.

7. It was not the purpose of Congress in Section 2, Eleventh (c), "to help dissident or rising new unions recruit new members" or to permit "employees to choose between membership in (their bargaining representative) and another competing union." *Pennsylvania Railroad Co. v. Rychlik,* 352 U. S. 480, 488-489, 494 (1957). SUNA a rival organization without a labor agreement covering a craft or class to which yardmen employed by the Carrier may be transferred, is not within the intendment of the statute.

8. The fact that SUNA, like the Trainmen, is qualified to select or designate members of the National Railroad Adjustment Board or participates in other activities of concern to railroad labor generally does not bring SUNA or its members within the alternative union protections of Section 2, Eleventh (c) in the absence of a showing that they face the problem of intercraft mobility. *Rohrer v. Conemaugh & Black Lick Railroad Co.*, 359 F. 2d 127 (3rd Cir. 1966).

9. Since the February 1, 1967 union shop agreement is lawful, its execution and enforcement do not constitute unlawful coercion, interference or influence under Section 2 of the Railway Labor Act, 45 U. S. C., § 152.

10. Defendants have not violated any of the provisions of the Railway Labor Act.

11. The issues in this case are found against the plaintiffs and for the defendants and plaintiffs are not entitled to relief or any part thereof they pray for in their Complaint. The plaintiffs have failed to show any irreparable injury or that they have sustained any damages, the defendants not having been shown to have violated, or to have threatened to violate, the Railway Labor Act.

12. The complaint as to the several defendants must be dismissed in its entirety on the merits with costs.

Julius J. Hoffman,
United States District Judge.

Dated: May 24, 1967.

Judgment Order.

In the United States District Court.

* * (Caption 67 C 285) * *

This cause coming on to be heard on the Verified Complaint of Plaintiffs filed on February 23, 1967 and on the Verified Answers of the Defendants; and

It appearing that a Temporary Restraining Order was denied after arguments on February 23, 1967; and

This cause having been heard on the merits on the said Complaint and Answers on April 3, and 4, 1967, and the Court having heard the testimony proffered by the Plaintiffs and having considered the written evidence offered by the Plaintiffs and having considered the Motions to Dismiss the Complaint by each of the Defendants, and having heard the arguments of counsel and being fully advised in the premises; and

The Court having tried this action upon the facts without a jury and having heretofore found the facts specially, and having heretofore stated separately its Conclusions of Law thereon and having directed the entry of an appropriate Judgment;

It Is Hereby Ordered, Adjudged and Decreed that the Complaint herein be and the same is hereby dismissed and that the Plaintiffs do have and recover nothing from the Defendants by reason of this action against said Defendants; that said action be and the same is hereby dismissed on the merits and that said Defendants do have and recover of and from said Plaintiffs their costs in this action.

Julius J. Hoffman,
United States District Judge.

Dated: May 24, 1967.

APPENDIX "C".

Statute Involved.

The Railway Labor Act, Section 2, Eleventh, (a) and (c) [45 U. S. C., Sec. 152, Eleventh, (a) and (c)]:

"Eleventh. Notwithstanding any other provisions of this Act, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this Act and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of this Act shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is the later, all employees shall become members of the labor organization representing their craft or class: *Provided,* That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling

service, that is, an employee engaged in any of the services or capacities covered in section 3, First (h) of this Act defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership: *Provided, however,* That as to an employee in any of said services on a particular carrier at the effective date of any such agreement on a carrier, who is not a member of any one of the labor organizations, national in scope, organized in accordance with this Act and admitting to membership employees of a craft or class in any of said services such employee, as a condition of continuing his employment, may be required to become a member of the organization representing the craft in which he is employed on the effective date of the first agreement applicable to him: *Provided, further,* That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services."